



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF S-X-H-S-

DATE: OCT. 3, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a private high school, seeks to classify the Beneficiary as a member of the professions holding an advanced degree, and also seeks a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and asserts that the Director abused his discretion in denying its petition, and that the Beneficiary has met the first and third prongs of the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (NYSDOT).

performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

The Director determined that the Beneficiary established her qualification as an advanced degree professional, noting the evidence of her Doctor of Education degree from [REDACTED]. The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Beneficiary was a high school Chinese language teacher. For the reasons discussed below, we find the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

### A. Substantial Merit and National Importance of the Proposed Endeavor

We agree with the Director's finding that the Beneficiary's proposed endeavor, teaching Chinese language classes to high school students, has substantial merit in terms of its educational, cultural and economic benefits. The Petitioner provided several articles in response to the Director's request for evidence (RFE) which describe the growing importance of the Chinese language in international business and culture, as well as the potential benefits to students.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of the Beneficiary's work. The Petitioner submitted evidence describing programs developed by the United States government to encourage and support the learning of critical foreign languages, including Mandarin. On appeal, the Petitioner provides additional information about the [REDACTED] run by the United States Department of State, which allows primary and secondary schools to host a language teacher from China, Egypt or Morocco. In addition, the Petitioner submits the names of some of the Beneficiary's former students who were accepted into the [REDACTED] program, also run by the U.S. State Department, along with letters and emails of appreciation from some of those students and their parents. The Petitioner also explains that because of the Beneficiary's advanced qualifications, it was able to offer students a four-year program in Chinese instead of the previous two-year program.

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<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

There is no doubt that foreign language education programs in general, especially in those languages such as Chinese that have been identified as “critical,” and provide significant cultural, economic, and national security benefits to the United States. We also acknowledge that the Beneficiary’s credentials and experience allow her to design and teach an advanced Chinese language curriculum that provides a significant benefit to both the Petitioner and its students. However, the evidence does not demonstrate that her proposed endeavor offers benefits that reach beyond the Petitioner to impact the field of Chinese language instruction more broadly, or that it otherwise offers broader implications consistent with a finding of national importance.<sup>3</sup> While the Petitioner asserts that the Beneficiary’s attendance at several conferences presented by [REDACTED]

[REDACTED] demonstrates the wider impact of her work, the record does not establish that her participation extends beyond personal professional development, or that she proposes to expand her influence on Chinese language education beyond the Petitioner’s institution.

#### B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Beneficiary. The Petitioner submitted evidence of the Beneficiary’s academic credentials, experience and professional development activities. In addition, several recommendation letters from her colleagues describe the Beneficiary’s skill as a teacher and her development of the Petitioner’s Chinese language program. For example, [REDACTED] Chair of the Petitioner’s [REDACTED] writes that “our Chinese program has significantly grown” through the Beneficiary’s work, and that she “showed leadership by leading professional development sessions for our department and for the entire school.” The record reflects the Beneficiary’s advanced qualifications as a teacher, the impact she has made on the Petitioner’s foreign language program, and the praise from her colleagues and students. Accordingly, we find that the Beneficiary is well positioned to advance her proposed endeavor of teaching the Chinese language to high school students, and therefore that she satisfies the second prong of the *Dhanasar* framework.

#### C. Balancing Factors to Determine Waiver’s Benefit to the United States

As explained above, the third prong requires the Petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of as labor certification. Here, the Petitioner has submitted evidence that the United States is facing a teacher shortage in the area of foreign languages, and asserts that it has faced difficulties in finding qualified Chinese language teachers.<sup>4</sup> However, as the Petitioner has not established that the Beneficiary’s proposed endeavor is of national importance as required under the first prong of the *Dhanasar* framework, she is not eligible for a national interest waiver, and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

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<sup>3</sup> Similarly, in *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. See *Dhanasar* at 893.

<sup>4</sup> We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process.

### III. CONCLUSION

Because the Petitioner has not established that the Beneficiary meets the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she is not eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-X-H-S-*, ID# 1616848 (AAO Oct. 3, 2018)